It is unnecessary to impose new, substantially different interconnection policies on LECs in order to ensure the growth of CMRS. The FCC has increasingly given this industry the freedom to respond to marketplace demands, instead of complex and artificial regulations. As a result, the cellular industry alone has grown to serve over 28 million subscribers as of mid-1995. With the addition of enhanced SMR and PCS, capacity has been expanded many times, setting the stage for continued growth and reduction of costs.

This tremendous expansion of cellular service could not have occurred if the FCC's existing interconnection policy had been a significant impediment to the wireless industry. In fact, the FCC's existing interconnection policy facilitated growth, by encouraging LECs and cellular operators to negotiate mutually acceptable interconnection arrangements.

Imposition of new regulations at this point runs the risk of upsetting the growth and competitive potential of CMRS by skewing the competitive structure of the industry. The *NPRM* represents a full about-face from the Commission's long-standing and indeed recently-expressed positions.[33] There is no substantial reason for this change of position.

"Bill and keep" cannot be justified because of a concern that LECs will manipulate interconnection charges to inhibit local competition from CMRS providers.[34] In fact, the rapid competitive growth of cellular suggests the opposite. There is no evidence that interconnection rates have been a significant competitive impediment to CMRS. Few, if any, formal complaints have been pursued before the FCC or states concerning LEC-cellular interconnection rates. There are *no* FCC decisions finding interconnection rates to be anticompetitively high. In fact, the only reported

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33 *See CMRS Second Report*, 9 F.C.C.R. at 1498; *Need to Promote Competition and Efficient Use of Spectrum, Declaratory Ruling*, 2 F.C.C.R. 2910, 2912 (1987) (*Cellular Interconnection Declaratory Ruling*).

34 *See NPRM* at ¶¶ 12-14.

FCC decision resolving a cellular interconnection complaint made no adverse finding against the LEC.[35] Moreover, in 1995 the FCC recited the fact that there were no pending cellular interconnection complaints as evidence that its cellular interconnection policies had prevented anticompetitive interconnection practices.[36] Similarly, there are few State commission decisions that resolve cellular interconnection complaints adversely to the LEC.[37]

Moreover, the Commission's "bill and keep" proposal cannot be justified based on the onset of PCS and enhanced SMR service. In CC Docket 94-54, the Commission recently extended its cellular policies to cover these and other forms of CMRS, after properly finding, based on comments from a wide variety of participants, that the cellular policies had worked well.[38] None of the parties filing comments in CC Docket 94-54 submitted concrete evidence that the existing policies have failed to serve the public interest. Moreover, the factual circumstances have not changed in the time since the Commission extended its cellular policy to all CMRS.

Under these circumstances, there is no foundation for the proposal to replace the successful LEC-CMRS interconnection policy with "bill and keep." Any reversal of this recently-endorsed interconnection policy would require a reasoned analysis for the change and would be subject to careful judicial scrutiny, even if the 1996 Act had not become law.[39]

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35 *Indianapolis Telephone Co.*, 1 F.C.C.R. 228 (Com. Car. Bur. 1986), *review denied*, 2 F.C.C.R. 2893 (1987).

36 *Eligibility for the Specialized Mobile Radio Services*, GN Docket 94-90, *Report and Order*, 10 F.C.C.R. 6280, 6293 (1995).

37 Search of LEXIS, FECOM library, ALLPUC file (Feb. 8, 1996).

38 *See CMRS Second Report*, 9 F.C.C.R. at 1494-97.

39 Although an agency's view of what is in the public interest may change, the agency "must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored." *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 923 (1971); *accord Office of Communications of United Church*

(d) "Bill and keep" lacks any factual or economic basis

Apart from the legal flaws already discussed, the Commission's "bill and keep" proposal is a blunt instrument lacking any valid economic and factual basis, when imposed as a regulatory requirement. BellSouth does not, however, maintain that *voluntary* "bill and keep" arrangements are necessarily undesirable. Parties to a *voluntarily negotiated agreement* may well conclude that "bill and keep" is an efficient and desirable mechanism that benefits both parties.

The proponents of a mandatory "bill and keep" policy rely heavily on papers by Gerald W. Brock for support.[40] They ignore Brock's central contention, however, which is that "the theoretically correct interconnection charge is cost based mutual compensation."[41] He offers "bill and keep" (also called "sender keep all") only as an "administratively simple" alternative[42] that is "likely to develop in competitive communications markets as the compensation method for mutually beneficial interconnection arrangements."[43] Significantly, Brock offers no examples of how "bill and keep" has been used, or even could be used, in the provision of telecommunications services.

Neither of the real-life situations examined by Brock (the Internet and the NYNEX-Teleport interconnection agreement) involves a "bill and keep" arrangement, much less one mandated by the

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of Christ v. FCC, 707 F.2d 1413, 1425 (D.C. Cir. 1983) ("[A]brupt shifts in policy do constitute danger signals that the Commission may be acting inconsistent with its mandate.").

40 *See NPRM* at ¶¶ 61-67; Gerald W. Brock, *The Economics of Interconnection* (1995) (contains an Introduction and three papers: *Price Structure Issues in Interconnection Fees* (Brock Paper No. 1), *Interconnection and Mutual Compensation With Partial Competition* (Brock Paper No. 2), and *Incremental Cost of Local Usage* (Brock Paper No. 3)).

41 Brock Paper No. 3 at 1; *see* Brock Paper No. 2 at 1 ("A mutual compensation policy with prices limited to the cost of service prevents the monopolist of part of the market from extending its market power to potentially competitive sectors of the market.").

42 Brock Paper No. 2 at 1.

43 Brock Introduction at ii.

government. In the case of the Internet, six large-scale national internet service providers (ISPs) with roughly equal capacity have *agreed* to interchange traffic *amongst themselves* without charge. They are under no obligation to interchange traffic with other ISPs or to allow other ISPs to join in their arrangement; they typically require smaller entrants to pay for interchange in an asymmetric arrangement resembling the access charges paid to ILECs by IXCs, because under these circumstances "bill and keep" would result in asymmetric traffic exchange.[44] Moreover, the agreement between NYNEX and Teleport provides for payments between the companies based on peak traffic flow. Thus, while off-peak traffic is carried without any additional transfer payments, the overall arrangement between the parties involves volume-based payments between the parties, unlike a "bill and keep" arrangement.

The criteria posited by Brock and recited in the *NPRM* for when "bill and keep" is economically efficient[45] may appropriately be considered by the parties to a negotiation. Brock's test is too subjective, however, to be a basis for imposing a regulatory requirement. The second criterion in particular—whether "actual costs are very low so that there is little difference between

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44 *See* R. Simnett, T.R. Spacek, P. Srinagesh, *An Economic Analysis of the Claimed Applicability of the Bill and Keep Interconnection Arrangement to Local Telecommunications Competition*, 14-16 (Bellcore 1995). This paper also notes that there are other problems posed by the application of the Internet model to telecommunications. "Bill and keep" arrangements among service providers require that a sharp distinction be drawn between end users, who must pay their service provider for connectivity, and service providers, who are entitled to exchange traffic without charge. This creates incentives for large end users to portray themselves as service providers in order to avoid a payment obligation. A second problem is that "bill and keep" arrangements do not extend to "transit" services. An intermediary network connecting two other networks will typically bill one or the other networks for performing the transfer of data, because under "bill and keep" it would receive no payment for performing the transit function. *Id.* at 12-14.

45 The *NPRM* summarizes Brock's criteria as follows: "a bill and keep approach is economically efficient if either of two conditions are met: (1) traffic is balanced in each direction, or (2) actual interconnection costs are so low that there is little difference between a cost-based rate and a zero rate." *NPRM* at ¶ 61; *see* Brock Paper No. 3 at 1.

a cost based rate and a zero rate"—is completely subjective: how low is too low? Moreover, the "actual costs" will vary significantly between peak and off-peak hours, as Brock recognizes,[46] which makes it particularly difficult to apply Brock's formulation in an objective way.

The subjective nature of this analysis readily lends itself to factual manipulation. For example, to make the "actual costs" of LEC termination appear to be "very low," proponents of "bill and keep" recited the *average* cost of termination, and not the peak-hour cost, thereby understating the actual cost of peak-hour termination by a factor of ten or more.[47]

When traffic is substantially unbalanced, a "bill and keep" arrangement will rarely, if ever, be appropriate. Even Brock acknowledges that when "the terminating cost . . . is substantial and the terminating traffic is all one way," the originating carrier "will have to pay the cost of termination because [the terminating carrier] is not getting a reciprocal benefit."[48] A LEC cannot lawfully be expected to provide service without payment. In the case of CMRS-LEC interconnection, the traffic imbalance is very substantial.

Parties are likely to consider entering into voluntary "bill and keep" arrangements in situations where traffic is balanced *and* services and facilities are similar in price. This is not the case for LEC-CMRS interconnection. CMRS providers typically bill customers for airtime on a per-minute basis for both incoming and outgoing calls. LECs, on the other hand, do not bill their customers for incoming calls, and many do not bill on a per-minute or per-call basis for outgoing

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46 *See* Brock Paper No. 3 at 3 (assuming that peak cost is ten times the average and off-peak cost is zero). In fact, off-peak costs are significant, both because there are non-traffic-sensitive costs involved that cannot be assigned entirely to peak usage and because there are costs involved in making capacity available off-peak, instead of terminating calls only during peak hours. There are costs involved in keeping switching offices in operation during off-peak hours, such as electricity, personnel, etc.

47 *See NPRM* at ¶ 61; Brock Paper No. 3 at 3.

48 Brock Paper No. 1 at 5

calls. Thus, under a "bill and keep" policy, the CMRS provider would get incremental revenues when it originates *or* terminates, while the LEC gets no incremental revenue when it terminates and in many cases does not even when it originates.

(e) "Bill and keep" is poor public policy

In any event, "bill and keep" should be rejected as a poor public policy choice because it would have results clearly contrary to the public interest, as set forth herein. The most obvious such flaw is that "bill and keep" would increase the imbalance between mobile-to-land and land-to-mobile calls, because CMRS carriers would have an incentive to lower the cost of making mobile-to-land calls, which already predominate. This would result in an ever-increasing net revenue flow to the CMRS provider and ever-increasing net costs for the LEC.

As a result, "bill and keep" would cause LECs to attempt to recover costs from other than the cost-causative customer—in other words, LECs would be forced to cross-subsidize the costs of terminating mobile-to-land traffic from other sources. LECs could attempt to generate the lost revenue by charging higher prices for landline-originated calls terminated on CMRS networks, to the detriment of LEC customers. Alternatively, LECs could charge higher prices for landline-to-landline calls, to the detriment of LEC customers, thereby adversely affecting the availability of universal service and the viability of the Universal Service Fund.

These cost burdens would not fall only on ILECs, but also on new facilities-based LEC entrants, just as they are beginning to compete with ILECs. The Commission's proposal would oblige all LECs—incumbents and new entrants—to enter into "bill and keep" arrangements and thereby provide "free" interconnection to CMRS for termination of calls to their customers. Even if "bill and keep" were not mandatory for these new carriers, they would be subject to competitive pressure to enter into such arrangements, because CMRS providers might be unwilling to interconnect with them otherwise. As a result, they would incur substantial cost burdens that would ultimately drive up costs to their customers.

Moreover, adoption of "bill and keep" for LEC-CMRS interconnection, while following a different policy for other forms of interconnection, would result in discriminatory pricing, contrary to the principles of both Section 201 and new Sections 251 and 252. CMRS providers would pay nothing for LEC termination, while IXCs using similar facilities and network elements would pay tariffed access charges for termination of LEC-bound traffic. There appears to be no cost-based justification for exempting CMRS providers entirely from paying for call termination while others must pay for comparable facilities.

While some differences are justified in the rates paid by CMRS providers and IXCs for similar facilities because of the different functions they serve, the difference would become dramatic if "bill and keep" were adopted for CMRS. This would create a market distortion that may result in uneconomic incentives. For example, an IXC may attempt to evade terminating access charges by arranging with a CMRS provider to act as an intermediary for terminating LEC-bound calls via the CMRS provider's LEC interconnection facilities. The IXC would pay the CMRS licensee a fraction of the access charge that would have been payable to the LEC, and the CMRS licensee would have no obligation to pay anything to the LEC. This would obviously result in an increase in LEC-bound traffic from the CMRS carrier, with no revenue being paid to the LEC for terminating this traffic; meanwhile, the LEC would lose the terminating access revenue that the IXC would have paid.

Ultimately, the LEC will likely be obliged to recover the cost of terminating CMRS-originated traffic from local landline ratepayers if "bill and keep" prevents recovering the cost from the originating carrier. This may not be possible, however, in states that have adopted a price cap regulatory structure. Moreover, shifting the recovery of interconnection costs for LEC termination of CMRS-originated calls from the CMRS provider to the LEC will result in unnecessary, inefficient, and inappropriate cross-subsidization of competitive services by landline ratepayers. This is itself sufficient reason for rejection of the ill-considered "bill and keep" proposal.

B. Implementation of Compensation Arrangements

1. Negotiations and Tariffing

(a) The 1996 Act relies on voluntary negotiation and establishes a specific scheme for regulatory intervention and review of interconnection arrangements

As BellSouth shows in Section I.A, the 1996 Act expressly establishes voluntary negotiations as the principal means of establishing the terms and conditions for interconnection arrangements between telecommunications carriers and ILECs. Moreover, Congress has fully addressed the procedures for regulatory assistance in such interconnection negotiations and for the filing and review of interconnection agreements, as set forth in Section I.B. The policies adopted by Congress promote arrangements that foster competition and advance economic efficiency. Accordingly, there is no need for the FCC to adopt any rules beyond those that may be needed to implement the policy choices made by Congress.

(b) Negotiated interconnection agreements have worked well

As discussed in Sections II.A.3.(c) and II.A.1, voluntary interconnection negotiations have worked well in the CMRS industry. In all of the states in the BellSouth region, BellSouth Telecommunications, Inc. ("BST") has negotiated mutually acceptable interconnection agreements with cellular carriers. The 1996 Act encourages telecommunications carriers and ILECs to reach voluntarily negotiated interconnection agreements by removing most of the requirements that would otherwise govern interconnection, provided the agreement is nondiscriminatory. *See* § 252(a)(1), (e)(2)(A). This gives the parties the flexibility to reach an agreement by which both parties benefit. Bad-faith bargaining is discouraged by the prospect that the State commission will step in and impose less flexible requirements through compulsory arbitration. *See* § 252(b). This approach builds on the existing LEC-CMRS interconnection policy of encouraging voluntary negotiations.

(c) State commission review and public availability of interconnection agreements

The 1996 Act provides that after negotiation, ILECs' interconnection agreements should be filed with the relevant State commission and be made publicly available. As noted in Section II.A.1, this is already the case for LEC-CMRS interconnection agreements in all of the states in BellSouth's region, a process that has worked well.

Under the 1996 Act, ILECs' interconnection agreements, whether voluntarily negotiated or established through compulsory arbitration, are subject to review and acceptance by the relevant State commission. In addition, BOCs may file statements of generally available terms and conditions for interconnection. These too are filed with the State commission, where they undergo a tariff-like review process before acceptance. All interconnection agreements and statements are made publicly available.

2. Jurisdictional Issues

(a) Under the 1996 Act, the FCC has no authority to preempt State regulation of ILEC interconnection consistent with the statute

As BellSouth shows in Section I.B, the 1996 Act fully addresses the issue of the division of jurisdictions between the FCC and State commissions with respect to interconnection. Under the 1996 Act, ILEC-CMRS interconnection matters are addressed by the specific provisions of Sections 251 and 252, which provide a federal framework for interconnection and spell out the respective policy and implementation roles of the FCC and State commissions. Under Section 251(d)(3), the Commission lacks the authority to preempt state jurisdiction over LEC interconnection obligations, to the extent a State commission adopts policies that are consistent with the 1996 Act and will not interfere substantially with its implementation.

(b) Even prior to the 1996 Act, the FCC lacked authority to preempt state regulation of LEC-CMRS interconnection

The jurisdictional theory set forth in the *NPRM* has been rendered moot by the 1996 Act. Even before enactment of the 1996 Act, however, the FCC's authority to preempt state regulation was very limited, and would not have supported preemption. Under Section 2(b)(1) of the Communications Act, the FCC lacks any jurisdiction over the "charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio."[49] Under *Louisiana Public Service Commission v. FCC*,[50] when the same facilities are used for both intrastate and interstate communications, the FCC's jurisdiction extends only to the interstate portion, leaving the intrastate portion fully subject to state regulatory jurisdiction. In light of the jurisdictional bar posed by § 2(b)(1), the FCC is obligated to separate the intrastate portion

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49 47 U.S.C. § 152(b)(1).

50 *Louisiana Public Service Commission v. FCC*, 476 U.S. 355, 373-76 (1986).

that is not subject to its jurisdiction from the interstate to the extent it is possible to do so. As a result, it may preempt state regulation of jurisdictionally mixed facilities only when the interstate and intrastate aspects cannot be separately regulated at the federal and state levels, and as a result "the state law stands as an obstacle to the accomplishment and execution of the full objectives of Congress."[51]

The jurisdictionally mixed nature of ILEC-CMRS facilities presents no greater impediment to achievement of federal policies than the jurisdictionally mixed nature of other ILEC facilities. To the extent there is any legal and factual basis for the assertion of FCC jurisdiction over ILEC-CMRS interconnection charges (which is highly doubtful, in light of the 1996 Act), it is possible to use sampling techniques to determine the proportions of interstate and intrastate traffic carried over a given interconnection arrangement, which would permit the application of federally-regulated charges to the interstate traffic and state-regulated charges to the intrastate traffic.

Moreover, even if it were not possible to separate interstate and intrastate traffic, there is no need for preemption, because there is no evidence that state interconnection policies are inconsistent with federal objectives in the interconnection area. In the absence of substantial evidence that state interconnection policies have substantially impeded valid federal objectives, there is no basis for FCC preemption. Accordingly, under *Louisiana Public Service Commission v. FCC*, the FCC has no power to preempt state jurisdiction over intrastate interconnection.

[51] *Louisiana*, 476 U.S. at 368-69 (*citing Hines v. Davidowitz*, 312 U.S. 52, 61 (1941)); *see id.* at 375 n.4 (*citing North Carolina Utilities Commission v. FCC*, 537 F.2d 787 (4th Cir.), *cert denied*, 429 U.S. 1027 (1976) and *North Carolina Utilities Commission v. FCC*, 552 F.2d 1036 (4th Cir.), *cert. denied*, 434 U.S. 874 (1977)); *see also id.*, 476 U.S. at 369 (*citing Fidelity Federal Savings and Loan Association v. De la Cuesta*, 458 U.S. 141 (1982)).

(c) Section 332 does not authorize preemption of state regulation over LEC-CMRS interconnection rates and charges

Because Sections 332 and 251-52 of the 1996 Act are not in conflict and because the term "telecommunications carrier" covers CMRS providers, Section 332 cannot be utilized to preempt state regulation of the rates and charges for ILEC-CMRS interconnection. Section 332(c)(3)(A) expressly preempted state regulation of the rates charged "*by*"—not "*to*"—any commercial mobile service provider. *See* § 332(c)(3)(A). The FCC has already held that this section does not pertain to LECs' charges to CMRS providers for interconnection. In *Louisiana Public Service Commission,* the FCC held that "Louisiana's regulation of the interconnection rates charged by landline telephone companies to CMRS providers appears to involve rate regulation only of the landline companies, not the CMRS providers, and thus does not appear to be circumscribed in any way by Section 332(c)(3)."[52]

Despite the explicit holding in the *Louisiana Public Service Commission* decision that State regulation of interconnection is not preempted, some CMRS commenters may nevertheless take the position that this decision supports preemption, because the decision leaves open the possibility that the charges made by a CMRS provider to the LEC for terminating wireline-originated calls might be covered by Section 332(c)(3)(A)'s preemption.[53] In fact, Section 332 itself negates any such interpretation. Congress addressed the issue of LEC-CMRS interconnection not in Section 332(c)(3) but in Section 332(c)(1)(B). Rather than preempt State regulation of interconnection charges, Congress chose only to establish a guaranteed right to interconnection, by providing that the FCC must entertain requests by CMRS providers to order a LEC to provide interconnection pursuant to

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[52] *Louisiana Public Service Commission,* 10 F.C.C.R. 7898, 7908 (1995).

[53] *Id.*

Section 201. In doing so, Congress explicitly stated that it did not intend to limit or expand "the Commission's authority to order interconnection pursuant to the [Communications] Act." § 332(c)(1)(B). If Congress had intended to subject all interconnection rates to the FCC's exclusive jurisdiction, surely it would have so stated in this provision.

Moreover, interpreting Section 332(c)(3)(A) as subjecting the CMRS provider's charges for termination of ILEC-originated calls to federal preemption would be inconsistent with Congress' determination in the 1996 Act that the terms and conditions of interconnection are to be decided by negotiation among the ILEC and the CMRS provider and that such agreements are subject to State, not FCC, review. It would be contrary to this statutory scheme to place the CMRS provider's charges under exclusive federal jurisdiction, and exclude them from the negotiation and State review process that Congress has just applied to all interconnection arrangements between ILECs and telecommunications carriers.

Moreover, such an interpretation would be inconsistent with Section 332(c)(3)(A) itself. Section 332(c)(3)(A) did not preempt State regulation of rates for *non-CMRS* services charged by an entity that also provides CMRS service; rather, it preempted State regulation of "the rates charged by any commercial mobile service." As the latter term is defined, it does not apply to the CMRS provider's charges to the LEC for terminating calls. The definition of "commercial mobile service" in Section 332(d)(1) makes clear that Congress only intended this term to include "mobile service" that is made available to the public at large, or a substantial portion thereof. Clearly, the CMRS provider's provision to a LEC of call-termination service is not within this definition, because it is neither a mobile service nor available to the public. Accordingly, the charges for termination of landline-originated calls are not subject to preemption by the terms of Section 332.

In any event, the FCC has long recognized that while LEC-CMRS interconnection involves both intrastate and interstate aspects, the intrastate and interstate portions of the interconnection are readily segregable, and that preemption of the intrastate interconnection rates is therefore not warranted, especially because CMRS is predominantly intrastate.[54] In fact, the Commission reached this conclusion very recently in its *CMRS Second Report*, where it stated:

> With regard to the issue of LEC intrastate interconnection rates, we continue to believe that LEC costs associated with the provision of interconnection for interstate and intrastate are segregable, and, therefore, we will not preempt state regulation of LEC intrastate interconnection rates. . . .[55]

The Commission has cited no intervening facts warranting reversal of this long-held policy.[56] Thus, even if Sections 251 and 252 did not expressly provide that State commissions have jurisdiction over LEC-CMRS interconnection charges, there would be no rational basis on which the Commission could conclude that the interstate and intrastate aspects of interconnection rates are inseparable, warranting preemption.

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54 *See CMRS Second Report*, 9 F.C.C.R. at 1498; *Cellular Interconnection Declaratory Ruling*, 2 F.C.C.R. at 2912.

55 *CMRS Second Report*. 9 F.C.C.R. at 1498.

56 *See NPRM* at ¶ 111.

III. INTERCONNECTION FOR THE ORIGINATION AND TERMINATION OF INTERSTATE INTEREXCHANGE TRAFFIC

This is the only portion of the *NPRM* that is unaffected by the 1996 Act, because the statute does not address the issue of access charges between IXCs and CMRS providers. The *NPRM* seeks comment on whether the current lack of any FCC policy in several aspects of this subject should result in regulatory attention.

BellSouth addresses only one of the issues raised by this part of the *NPRM*. The Commission solicits comment on whether it may be "necessary to apply certain protections . . . in the foreseeable future" to the arrangements among LECs, IXCs, and CMRS providers where the LEC acts as the intermediary between the CMRS provider and IXC for delivery of interexchange traffic.[57]

There is no need for regulatory intervention at this time. The LEC and CMRS providers consider the routing of traffic between the CMRS provider and IXCs in their negotiated interconnection agreements. Accordingly, there is no need for a separate regulatory mechanism to address CMRS-IXC access arrangements that utilize LEC facilities.

The Commission's proposal to require the establishment of joint arrangements between CMRS providers and LECs for the provision of interstate access is a solution in search of a problem. The current system works well—the CMRS provider and the LEC can negotiate such arrangements as a part of their interconnection agreement, taking into account the costs they may already recover

[57] *NPRM* at ¶¶ 115, 116.

from the IXCs.[58] Replacing this system with a joint access arrangement is unnecessary and would lead to difficult cost sharing and recovery problems.

The CMRS providers and IXCs have alternatives. For example, an entity wishing to avoid using LEC interconnection facilities for such access arrangements would obtain leased lines or microwave facilities to connect directly the CMRS switch to the IXC's point of presence, thereby bypassing the LEC. Many cellular systems do this today, when the economics so warrant.

[58] Under one current form of such an arrangement between CMRS providers and LECs, the LEC does not impose a usage-based charge on the CMRS provider for transporting CMRS-originated traffic to the IXC, and the LEC collects access charges from the IXC excluding the carrier common line charge in Type 1 CMRS interconnection and the carrier common line and switching charges in Type 2A interconnection. *See also* Pacific Telesis Reply Comments, CC Docket 94-54, at 9-10 (Oct. 13, 1994).

IV. APPLICATION OF THESE PROPOSALS

As indicated elsewhere in BellSouth's comments, the FCC has no need—and indeed no authority—to adopt *any* policies concerning ILEC-CMRS interconnection at variance with the scheme set forth in the 1996 Act. Any policies that are adopted, however, should be applied uniformly to all CMRS providers, consistent with Section 332(c).[59] The application of different interconnection policies to competing suppliers of similar services would not only violate the requirements of Section 332(c), but would also profoundly disserve the public interest by creating artificial advantages for one competing carrier over another, thereby distorting the marketplace and creating uneconomic incentives.

Indeed, BellSouth submits that the Commission should apply uniform interconnection policies not only to all CMRS providers, but to all telecommunications carriers, wireless and wire-based. This increasing competitive convergence among a wide variety of wired and wireless networks was one of the principal bases of the Commission's PCS policies, which sought to facilitate such competition.[60] Similarly, in approving the AT&T-McCaw merger, the FCC encouraged the development of wireless as a source of competition for landline carriers.[61]

In the 1996 Act, Congress has adopted a single, uniform interconnection policy that is equally applicable to wireless and wire-based telecommunications carriers. In light of this new statute, there is no legal basis for the Commission to its proposed "bill and keep" policy or to

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59 47 U.S.C. § 332(c); *see CMRS Second Report*, 9 F.C.C.R. at 1418.

60 *New Personal Communications Services*, GEN Docket 90-314, *Notice of Proposed Rulemaking and Tentative Decision*, 7 F.C.C.R. 5676, 5687-88, 5705 (1992); *Second Report and Order*, 8 F.C.C.R. 7700, 7709-10, 7747 (1993) (subsequent history omitted).

61 *Craig O. McCaw*, 9 F.C.C.R. 5836, 5871-73 (1994).

preempt State regulation respecting the compensation for ILEC-CMRS interconnection. BellSouth urges the Commission to complete this proceeding consistent with the will of Congress.

Respectfully submitted.

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March 4, 1996

<u>CERTIFICATE OF SERVICE</u>

I, Donna M. Crichlow, hereby certify that copies of the foregoing Comments of BellSouth Corporation in CC Docket 95-185 have been served by hand this 4th day of March, 1996, on the following:

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